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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/542,294
Filing Date: April 21, 2006
Appellant(s): JOHANSSON ET AL.

Johansson et al
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 01/19/2010 appealing from the Office action mailed 05/01/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

EP 0608941	Maasland	08-1994
EP 1213676	Harmsen	06-2002

3,261,324

Conover

07-1966

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-7 and 9-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maasland (EP 0608941 A1) in view of Harmsen et al (EP 1213676 A1).
2. In re claim 1, with reference to col.2 lines 23-26 and 30-33, and Figure 1, Maasland discloses a computer controlled arrangement for housing a large number of milking animals, each of which belongs to one of a plurality of groups, the arrangement comprising: a resting area (4-11) wherein the milking animals are allowed to rest, a feeding area (3) wherein the milking animals are fed; and a milking area (2) housing at least one milking robot for milking the milking animals, wherein at least one of the resting area (4-11) and the feeding area (3) is partitioned in sections which corresponds to the number of groups to which said milking animals belong; and a device (13,19,20,21,33) including a plurality of selection gates and a plurality of animal identification members, the device provided for automatically directing each of the milking animals moving towards the at least one of said resting area and the said feeding area which is partitioned in sections, into one of the sections depending on the group, to which the respective milking animal belongs, so that each of the sections will house milking animals belonging to one only of the groups. Not disclosed is mixing the plurality of groups in at least one of the resting, feeding, and milking areas.
3. However, with reference to [0002] and [0022-23], Harmsen et al disclose a computer controlled arrangement for housing a large number of milking animals

including an animal identification device (8.3,8.4) provided for identifying each milking animal and a resting area (10.1), a milking area (10.2), and a feeding area (10.3), wherein milking animals can be grouped, and wherein the device for identification is configured to mix the plurality of groups including the large number of milking animals in at least one of the resting, feeding, and milking areas [0042]. The advantage of this is to feed or milk a plurality of animals from a plurality of groups at the same time for greater efficiency. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the system of Maasland to mix the plurality of groups as taught by Harmsen et al in order to feed or milk a plurality of animals from a plurality of groups at the same time for greater efficiency.

4. In re claims 2 and 21, with reference to col.3 lines 20-27 and Figures 1 and 3, Maasland discloses the claimed invention as described above including the milking area houses a plurality of milking boxes (31,32) each of which being adapted to receive a respective milking animal, the resting area (4-11) is partitioned in sections, each of which being adapted to house milking animals belonging to one of the plurality of groups, and each of which being linked (12) to the milking area (2) so that milking animals in the respective section have access to a subset only of the plurality of milking boxes (each animal can only go into one milking box), and a device (20) is provided for automatically enlarging or reducing each of the respective subsets of the plurality of milking boxes to which animals housed in each section have access, depending on the number of milking animals housed in the respective section or on the milking capacity required by the milking animals housed in the respective section. Not disclosed is the at

least one milking robot being adapted to milk the animals present in the milking boxes concurrently.

5. However, the Examiner takes Official Notice that it is well known in the art to have a milking robot that can milk animals in a plurality of milking boxes concurrently. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the milking robot of Maasland to milk a plurality of milking boxes concurrently in order to have faster production.

6. In re claims 3, 9, and 22, Maasland discloses the claimed invention as described above except for the milking area having a plurality of milking robots.

7. However it would have been obvious to one having ordinary skill in the art at the time the invention was made to have had a plurality of milking robots in order to have faster production, since it has been held that mere duplication of the essential working parts involves only routine skill in the art. In re Japikse, 86 USPQ 70.

8. In re claim 4, with reference to Figure 1, Maasland discloses the milking area is arranged so that the milking animals have to pass the milking area when moving from the resting area to the feeding area.

9. In re claim 5, with reference to Figure 1, Maasland discloses the resting area is partitioned in sections.

10. In re claims 6, 11-16, 19, and 26-27, Maasland discloses the claimed invention as described above including a large number of milking animals are allowed to move freely in the feeding area and the resting area (col.1 lines 19-35). Maasland discloses the claimed invention except for an animal identification device.

11. However, with reference to [0002], [0022]-[0023], and Figure 3, Harmsen et al disclose a computer controlled arrangement for housing a large number of milking animals including an animal identification device (8.3,8.4) provided for identifying each milking animal presenting itself in front of the device provided for directing (12.1,12.2), and a device provided for opening at least one gate depending on the animal identification (col.10 lines 21-27), milking animals can be grouped by having similar milk production, similar phases of lactation cycle, or being ill, and there is a means for altering the belonging from one to another one of the plurality of groups [0009]. The advantage of this is to track where each individual animal is going and to keep the animals grouped for their overall wellbeing. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the system of Maasland to include an animal identification device as taught by Harmsen et al in order to track where each individual animal is going and to keep the animals grouped in such a manner for their overall wellbeing.

12. Maasland, as modified by Harmsen et al, disclose the claimed invention except for grouping the animals by being in heat or gestation. However, the Examiner takes Official Notice that grouping animals by such common characteristics is well known in the art. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have grouped the animals by heat or gestation for organization and the overall wellbeing of the animals.

13. In re claim 7, with reference to Figure 1, Maasland discloses the device provided for directing includes a plurality of passage ways (19, 18, 13) from the feeding area to the resting area.

14. In re claim 10, with reference to Figure 1, Maasland appears to disclose the feeding area being partitioned in Figure 1. However, if not, the Examiner takes Official Notice that partitioning a feeding area is well known in the art. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the feeding area of Maasland to be partitioned in order to minimize aggression.

15. In re claim 17, with reference to col.3 lines 35-40, Maasland discloses a driving means (33), particularly a movable fence, partition, wire, or live wire, for driving milking animals in the resting area towards the milking area.

16. In re claim 18, with reference to col.3 lines 42-44 and col.6 lines 27-33, Maasland discloses the large number of animals being 80, but also discloses that the distribution and groupings may vary. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the housing of Maasland to accommodate more animals, particularly at least about 200, in order to produce more milk.

17. In re claim 20, with reference to col.2 lines 30-33, Maasland discloses a means (13) for automatically altering the partitions in sections of the resting area.

18. In re claim 23, with reference to col.2 lines 51-52, Maasland discloses the device (20) provided for automatically enlarging or reducing each of the respective subsets of

the plurality of milking boxes comprises at least one computer controlled movable partition means, particularly a partition (door).

19. In re claim 24, with reference to Figure 1, Maasland discloses the milking area is arranged so that the milking animals have to pass the milking area when moving from the resting area to the feeding area.

20. In re claim 25, with reference to col.3 lines 35-40, Maasland discloses a driving means (33), particularly a movable fence, partition, wire, or live wire, for driving milking animals in the resting area towards the milking area.

21. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maasland (EP 0608941 A1) in view of Harmsen et al (EP 1213676 A1) as applied to claims 1-7 and 9-27 above, and further in view of Conover (3,261,324).

22. In re claim 8, Maasland, as modified by Harmsen et al, discloses the claimed invention except for the plurality of passage ways from the feeding area to the resting area being arranged in at least two floors.

23. However, with reference to col.1 lines 22-28, Conover discloses a housing arrangement for animals with at least two floors. The advantage of this is to maximize minimum floor space. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the passage ways of Maasland, as modified by Harmsen et al, to include at least two floors as taught by Conover in order to maximize minimum floor space.

24. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harmsen et al (EP 1213676 A1) in view of Maasland (EP 0608941 A1).

25. In re claim 28, with reference to [0002] and [0022-23], Harmsen et al disclose a computer controlled arrangement for voluntary milking of a large number of milking animals each of which belongs to one of a plurality of groups, the arrangement comprising a resting area (10.1) wherein the milking animals are allowed to rest, a feeding area (10.3) where the animals are fed, a milking area (10.2) housing at least one milking robot (4.1,4.2) for milking the milking animals presenting themselves in the milking area if the presented milking animals satisfy a milking decision criteria [0042-44], animals of each of the plurality of groups having simultaneous access to the milking area [0039-44], a device (8.3,8.4) provided for automatically directing each milking animal moving towards one of the resting area and feeding area. Not disclosed is the resting area being partitioned in sections which correspond to the number of groups and the device directing the animals into one of the sections depending on the group to which the animal belongs such that each section will only house animals belonging to one of the groups.

26. However, with reference to col.2 lines 23-26 and 30-33, col.3 lines 20-27, and Figures 1 and 3, Maasland discloses a computer controlled arrangement for housing a large number of milking animals, each of which belongs to one of a plurality of groups, the arrangement comprising: a resting area (4-11) wherein the milking animals are

allowed to rest, a feeding area (3) wherein the milking animals are fed; and a milking area (2), and a device (13,19,20,21,33) provided for automatically directing each of the milking animals moving towards the resting area, wherein the resting area (4-11) is partitioned in sections which correspond to the number of groups, each section being adapted to house milking animals belonging to one of the plurality of groups. The advantage of this is to regroup the animals so that they will rest together. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the arrangement of Harmsen et al to have resting area being partitioned in sections which correspond to the number of groups and the device directing the animals into one of the sections depending on the group to which the animal belongs such that each section will only house animals belonging to one of the groups as taught by Massland in order to regroup the animals so that they will rest together.

(10) Response to Argument

In response to applicant's arguments on page 17 to Maasland that each group of animals is given a unique schedule and that none of the devices in Maasland are configured to mix the groups, the Examiner maintains that Maasland alone was not used to reject this aspect of the claim.

In response to applicant's arguments on pages 18-20 that the common feeding area as taught by Harmsen would destroy the group's eating schedule by allowing the groups to eat together and would destroy the group's milking schedule as all animals are permitted into a common milking area and therefore would be incompatible with the

schedule system of Maasland. This argument is not persuasive because the Harmsen reference is only used as a teaching that in a facility with resting, feeding, and milking areas in which milking animals are separated into groups such as with Maasland, there can be a device for identification (8.3, 8.4) which can mix the plurality of groups in at least one of the milking, resting, and feeding areas [0042]. Harmsen also teaches that the animals can be allowed or denied access to a particular area based on whether the animal belongs to a predetermined group [0037], and that animals from these particular groups can be mixed from group to group depending on a given parameter such as average milk production [0035]. The Examiner maintains that the schedules as taught by Maasland would not necessarily be destroyed just by mixing animals from one group with the animals from another group or from switching one animal from one group to the next depending on a certain parameter, such as average milk production. The Examiner maintains that this would increase efficiency.

In response to applicant's arguments on pages 21-22 that claims 9 and 12 require the partitioned sections to limit animal access to a subset of the milking boxes, this argument is not commensurate with the scope of the claim. The claims only require the partitioned sections to be linked to the milking area so that the milking animals have access to a subset only of the milking boxes. The Examiner maintains that each of the resting areas (4-11) of Maasland is partitioned in sections, each of which being adapted to house milking animals belonging to one of a plurality of groups, each of which is linked to the milking area (2) so that animals in the respective section have access to a subset only because each animals can only go into one milking box at a time through

the robotic doors. Examiner would also like to point out that the Applicant's invention appears to function the same way (as shown in Figures 2 and 3) since it is ultimately the gates (21) which seem to control which milk box the animal has access to.

The applicant has failed to provide any arguments to the Examiner's rejection with regards to claims 8, 28, and 29, the claims stand and fall with the rejection to claim 1.

The Examiner is maintaining her rejection to these claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Monica Williams/

Conferees:

/Michael R Mansen/

Supervisory Patent Examiner, Art Unit 3644

/MJ/ Marc Jimenez

TQAS TC 3600